

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT E. WRIGHT, SR. : CIVIL ACTION  
 :  
 v. :  
 :  
 MONTGOMERY COUNTY, et al. : NO. 96-4597

**MEMORANDUM AND ORDER**

HUTTON, J.

January 26, 1999

Presently before the Court are the Motion to Compel Answers to Interrogatories and Production of Documents by Defendants Montgomery County, Montgomery County Commissioners, Mario Mele, Commissioner of Montgomery County, Richard S. Buckman, Commissioner of Montgomery County and Joseph M. Hoeffel, III, Commissioner of Montgomery County ("Montgomery County Defendants" or "Defendants") (Docket No. 72), Plaintiff's response thereto (Docket No. 78) and Defendants' reply thereto (Docket No. 85) and Defendants' Motion to Enforce subpoena to Sheilah Wright and For Sanctions (Docket No. 75), Defendants' Certification Pursuant to Local Rule 7.1(c) of Uncontested Motion to Enforce Subpoena to Sheilah Wright (Docket No. 79), Plaintiff's Reply Memorandum in Opposition to Defendants' Motion to Enforce Subpoena to Sheilah Wright (Docket No. 81) and Defendants' Surreply Contra Plaintiff's Reply to Defendants' Motion to Enforce Subpoena to Sheilah Wright and For Sanctions (Docket No. 86) and Plaintiff's Motion for

Discovery Conference and Stay of Discovery in the Meanwhile (Docket No. 76) and the Defendants' response thereto (Docket No. 80). For the foregoing reasons, Defendants' Motion to Compel is **GRANTED**, Defendants' Motion to Enforce Subpoena re: Sheilah Wright and for Sanctions is **GRANTED in part and DENIED in part** and Plaintiff's Motion for Discovery Conference and Stay of Discovery in the Meanwhile is **DENIED**.

### **I. BACKGROUND**

For convenience, the facts from this Court's Memorandum and Order dated December 22, 1998, are incorporated herein. On June 25, 1996, Plaintiff Robert E. Wright, Sr. ("Wright" or "Plaintiff") brought this employment discrimination action against Defendants Montgomery County, Richard S. Buckman, Commissioner of Montgomery County and Joseph M. Hoeffel, III, Commissioner of Montgomery County ("Montgomery County Defendants" or "Defendants").

In his complaint, Wright alleges, in substance, that the Defendants terminated his employment as Director at the Montgomery County Department of Housing Services ("MDHS") because he is an African-American, and seeks damages.

Wright was employed by Montgomery County for approximately seventeen (17) years in the Department of Housing Services. He was promoted to the Director of the Department of Housing Services of Montgomery County on July 1, 1994.

On April 12, 1996, following an investigation by the Housing of Urban Development ("HUD"), Wright was suspended from his position as Director. Wright alleges that he was officially terminated from the position on June 13, 1996. Wright alleges that the reason for his termination was because he is an African-American. He also alleges that he has suffered damages as a result of his firing.

Consequently, in June 1996, Plaintiff brought suit claiming that the Defendants discharged him because of his race in violation of Title VII of the Civil Rights Act (Count One). Plaintiff also alleges a litany of state law tort claims: defamation (Count Two); infliction of emotional distress (Counts Three, Four and Seven); breach of contract/wrongful discharge (Count Six); fraudulent or negligent misrepresentation (Counts Three and Five); tortious interference with contract (Count Three); abuse of process or malicious prosecution (Count Three); false swearing to authorities, obstruction of justice and official oppression (Count Three); and invasion of privacy (Counts Three and Eight). On February 25, 1997, Defendants filed Counterclaims against Plaintiff Wright for Breach of Fiduciary Duties, Negligence and Fraud. This Court has subsequently dismissed Counts Two through Eight of Plaintiff's Complaint.

## II. DISCUSSION

### A. Motion to Compel and For Sanctions

#### 1. Compel Discovery

On September 16, 1998, the Defendants served interrogatories and document requests on Plaintiff concerning certain of his financial dealings and bank accounts. On October 23, 1998, the Defendants filed a motion seeking an Order to compel the Plaintiff to respond fully and completely to their Interrogatories, to respond to Document Requests and to produce all responsive documents pursuant to the discovery requests served on Plaintiff on September 16, 1998. Because the Defendants failed to attach to their motion the interrogatories and request for production of documents as required by the Local Rules, see Ricci v. RCP/JAS, Inc., No. CIV. A. 97-7334, 1998 WL 372315, at \*1 (E.D. Pa. Jun. 17, 1998), this Court denied with leave to renew Defendants' motion. See Wright v. Montgomery County, 1998 WL 848107, CIV.A. No.96-4597, \*3-4 (E.D. Pa. Dec. 4, 1998). This Court noted, however, that it "believes that sufficient communication has taken place between the parties in an attempt to resolve this discovery dispute. Id. at 4.

Subsequently, on December 8, 1998, Defendants filed a Motion to Compel Answers and Interrogatories and Production of Documents. The Plaintiff filed his response thereto on December

23, 1998. On January 11, 1999, the Defendants filed a Surreply to Plaintiff's response to Defendants' Motion to Compel.

Under Federal Rule of Civil Procedure 26(b)(1), parties may obtain discovery regarding "any matter, not privileged, which is relevant to the subject matter involved in the pending action." The Rule's relevancy requirement is to be construed broadly, and material is relevant if it bears on, or reasonably could bear on, an issue that is or may be involved in the litigation. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350 (1978).

The Plaintiff does not contend that the requested discovery is privileged, only that Defendants have obtained the information requested from other sources. (Pl.'s Reply Mem. at 2.) The Plaintiff argues that Defendants' instant Motion to Compel is "moot" because Defendants issued subpoenas to various banks and lending institutions seeking the same information, which is the subject of this motion. (Id.) Whether Defendants have received some of the information now sought from Plaintiff from various banks and lending institutions is of no moment for purposes of this motion.

In light of the broad and liberal construction which the discovery rules are to be accorded, see American Health Sys., 1991 WL 30726, at \*2, and given the Court's discretion in managing discovery, see Thompson, 1995 WL 752422, at \*2 n.4 (quoting Sempier, 45 F.3d at 734), the Court finds that Defendants' request

to documents and interrogatories is reasonably calculated to lead to admissible evidence. Indeed, the Court has already found such evidence admissible. See Wright, 1998 WL 848107, at \*7 ("Any evidence supporting a justification for the termination of the Plaintiff from his position as Director of the MDHS is highly probative and therefore outweighs any possible prejudicial value.")

Defendants contend that Montgomery County terminated Wright because an audit by the United States Department of Housing and Urban Development, Office of Inspector General ("HUD Audit") revealed that Plaintiff Wright, and two other Caucasian employees, Thomas Raimondi and Philip Montefiore, all engaged in conflicts of interest by using these same HUD contractors to perform work on their own private properties. These discovery requests specifically concern, inter alia, Plaintiff Wright's alleged "arms length" payments to contractors, including several who Defendants allege were in conflict of interest with the Plaintiff. Accordingly, Defendants' Motion to Compel discovery is granted.

## **2. Sanctions**

The Defendants move the Court to enter the following sanctions: attorney's fees associated with preparing and filing the instant Motion and Surreply. The Court grants Defendants' Motion for Sanctions in the form of the cost of reasonable attorney's fees associated with filing this motion. Such fees are appropriate under Rule 37(a)(4)(A),

unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(a)(4)(A). Plaintiff's actions have effectively precluded Defendants from completing discovery and is therefore hindered from mounting any defense to Plaintiff's claims. Defendants have repeatedly stated that they intend to pursue the defense theory that the Plaintiff was fired because of his negligence, breach of fiduciary duty and fraud.

Moreover, the record evidences a history of dilatoriness on the part of the Plaintiff. See Wright, 1998 WL 848107, at \*6 (noting the "apparent lack of cooperation by the Plaintiff"). Despite repeated efforts by the Defendants, Wright has ignored Defendants' requests for production.

## **B. Motion to Enforce Subpoena**

### **1. Motion**

On December 14, 1998, Defendants filed a Motion to Enforce Subpoena to Sheilah Wright. On December 31, 1998, having not received any response from Plaintiff or the third-party, Defendants filed their Certification that no response to the instant motion had been filed. Plaintiff filed his untimely

response on January 4, 1999, seven days late. The Defendants filed a Surreply on January 11, 1999.

Rule 45(a) of the Federal Rules of Civil Procedure allows a party to a lawsuit to require a non-party "to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person." If the non-party wishes to protest the subpoena, it should do so in a written objection. Fed. R. Civ. P. 45(c)(2)(B); see Fed. R. Civ. P. 45(d)(2). After an objection is made, the party seeking the testimony or documents must then move for an order to compel the production. Fed. R. Civ. P. 45(c)(2)(B). As of the date of this Order, Sheilah Wright has not responded properly to Defendants' subpoena, in order to explain the basis of her objection. Fed. R. Civ. P. 45(c)(2)(B) & (d)(2). Moreover, Plaintiff filed an untimely response.

Thus, the Court treats the motion as uncontested pursuant to Rule 7.1(c) of the Local Rules of Civil Procedure of the United States District Court for the Eastern District of Pennsylvania. E.D. Pa. R. Civ. P. 7.1(c). Rule 7.1(c) states that, except for summary judgment motions, "any party opposing the motion shall serve a brief in opposition, together with such answer or other response which may be appropriate, within fourteen (14) days after service of the motion and supporting brief. In the absence of a timely response, the motion may be granted as uncontested . . . ."



Id.

Furthermore, in his untimely response to Defendants' motion, Plaintiff fails to state any reason why the subpoena served upon Sheilah Wright should not be enforced. Plaintiff states that the only reason for the subpoena is to "embarrass Sheilah Wright with questions regarding a short-term affair that the Plaintiff had in the late 1980's and early 1990's." (See Pl.'s Reply Brief at 2.) Defendants, however, allege that they intend to question Sheilah Wright on a variety of issues pertaining to Plaintiff's alleged misconduct, which this Court has already specifically held to be relevant. See Wright, 1998 WL 848107, at \*7. Similarly, the Defendants' request to documents in Sheilah Wright's possession pursuant to Schedule A of the subpoena is reasonably calculated to lead to admissible evidence. See supra Part II.A. Accordingly, Defendants' Motion to Enforce Subpoena is granted.

## **2. Sanctions**

Defendants move the Court to award the Defendants attorney's fees and costs associated with filing this motion. The Defendants, however, fail to provide any authority which compels this Court to grant their request. Accordingly, the Court refuses to award sanctions against the Plaintiff for Sheilah Wrights' refusal to honor the subpoena. Cf. Gen'l Ins. Co. of America v. Eastern Consol. Utilities, Inc., 126 F.3d 215, 220 (3d Cir. 1997) ("A non-party, by definition, is not a participant in the

litigation and, when a non-party refuses to provide discovery, no claim has been asserted by or against it." ).

### **C. Motion for Discovery Conference and Stay of Discovery**

#### **1. Motion**

On December 17, 1998, Plaintiff filed the instant motion requesting a discovery conference in order for the parties to present their "discovery plan." Plaintiff also seeks to stay discovery until such conference takes place. The Defendants filed their response thereto on December 31, 1998.

The instant motion arises from the Court's denial of Plaintiff's Motion for Protective Order to Cease Discovery and Plaintiff's Motion in Limine which sought to preclude Defendants from introducing relevant evidence. This Court denied Plaintiff's first invitation to cease discovery. See Wright, 1998 WL 848107, at \*5-6. In the instant motion, the Plaintiff restates the same failed arguments of his earlier motion. The Plaintiff argues that a discovery conference and cease of discovery is necessary "to limit the scope of discovery in this action to matters which are relevant to the subject matter involved in this action." (See Pl.'s Motion at 1.) See also Wright, 1998 WL 848107, at 5 (quoting Plaintiff's argument that "most, if not all, of the depositions and document requests made by the defendants do not and can not lead to discoverable evidence which would be admissible in this matter").

As this Court has already ruled on this matter, see supra Parts II.A-B, the Plaintiff's Motion is denied.

## **2. Sanctions**

The Defendants move the Court to enter the following sanctions: the Defendants are awarded attorney's fees associated with preparing and filing the instant Motion and Surreply. The Court grants Defendants' Motion for Sanctions in the form of the cost of reasonable attorney's fees associated with filing this motion. Plaintiff's Motion seeking a stay of discovery is a thinly-veiled, untimely and improper motion for reconsideration of this Court's Order dated December 4, 1998. See supra Part II.C.1. Therefore, Plaintiff's Motion is **DENIED**.

An appropriate Order follows.

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ROBERT E. WRIGHT, SR. : CIVIL ACTION  
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**O R D E R**

AND NOW, this 26th day of January, 1999, upon consideration of the Motion to Compel Answers to Interrogatories and Production of Documents by Defendants Montgomery County, Montgomery County Commissioners, Mario Mele, Commissioner of Montgomery County, Richard S. Buckman, Commissioner of Montgomery County and Joseph M. Hoeffel, III, Commissioner of Montgomery County ("Montgomery County Defendants" or "Defendants") (Docket No. 72), Plaintiff's response thereto (Docket No. 78) and Defendants' reply thereto (Docket No. 85) and Defendants' Motion to Enforce subpoena to Sheilah Wright and For Sanctions (Docket No. 75), Defendants' Certification Pursuant to Local Rule 7.1(c) of Uncontested Motion to Enforce Subpoena to Sheilah Wright (Docket No. 79), Plaintiff's Reply Memorandum in Opposition to Defendants' Motion to Enforce Subpoena to Sheilah Wright (Docket No. 81) and Defendants' Surreply Contra Plaintiff's Reply to Defendants' Motion to Enforce Subpoena to Sheilah Wright and For Sanctions (Docket No. 86) and Plaintiff's Motion for Discovery Conference and Stay of

Discovery in the Meanwhile (Docket No. 76) and the Defendants' response thereto (Docket No. 80), IT IS HEREBY ORDERED THAT:

(1) Defendants' Motion to Compel is **GRANTED**;

(2) Defendants' Motion to Enforce Subpoena to Sheilah Wright and for Sanctions is **GRANTED in part and DENIED in part**; and

(3) Plaintiff's Motion for Discovery Conference and Stay of Discovery in the Meanwhile is **DENIED**.

IT IS FURTHER ORDERED that:

(1) Sheilah Wright SHALL immediately comply with the subpoena served upon her and appear for her deposition within fifteen (15) days from the date of this Order, and fully produce the subpoenaed documents to Defendants' counsel within ten (10) days from the date of this Order; and

(2) Plaintiff SHALL pay Defendants' reasonable attorney's fees, as determined by the Court, associated with the preparation and filing of Defendants' Motion to Compel and Defendants' Response to Plaintiff's Motion for Discovery Conference and Stay of Discovery in the Meanwhile.

BY THE COURT:

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HERBERT J. HUTTON, J.